IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REV.APPLICATION NO.59 OF 1998

Mrs.Savita Shankar Patil .. Applicant

Versus

Shankar Dnyandeo Patil & Anr. .. Respondents

Mr.Dilip Bodke for applicant

Mr.Y.M.Nakhwa, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 21st November 2006.

P.C.

. This revision application is by the wife, who impugns the order of 2nd Additional Dist.Judge, Satara in Criminal Revision

Application No.190 of 1994. By this order, the learned Additional Sessions Judge has reversed the judgement of the J.M.F.C., Vaduj in Criminal Misc.Application No.155 of 1993. J.M.F.C. had allowed the application of petitioner wife for maintenance and awarded a sum of Rs.250/- per month. The husband was aggrieved by this order and accordingly approached revisional court.

2. When this revision application was admitted, this Court continued trial court's order and also granted liberty to applicant- wife to initiate proceedings for execution thereof, in case the husband fails to pay the same. The amount of Rs.250/- was to be treated as interim maintenance.

3. Mr.Bodke, learned Advocate appearing for applicant submits that the applicant has not received the entire sum as awarded by the trial court as also by this Court. Execution

proceedings are pending and intermittently, some amounts have been deposited by the first respondent husband. However, the entire amount under the trial court's order is not paid.

4. That apart, according to Mr.Bodke, Revisional Court was in complete error in reversing the judgement of the trial court. He has invited my attention to the fact that the trial court had categorically held that the husband has failed and neglected to maintain the applicant. Mr.Bodke has taken me through the Revisional Court's order and has contended that the Revisional Court should not have reversed a finding of fact which was consistent with the materials placed before the trial court.

5. Since, the respondent husband is absent, though served, I have with the assistance of Mr.Bodke, perused the order passed by the trial court as also Revisional Court (Additional

Sessions Judge).

6. The trial Judge has framed points for consideration. He has specifically held that the applicant - wife is unable to maintain herself. Learned Trial Judge has also held that the husband has sufficient means but refused to maintain her. Although, the amount claimed by applicant - wife is Rs.500/- p.m., the trial Judge has awarded Rs.250/- as maintenance. I have perused the judgement of J.M.F.C. in detail. Applicant - wife entered witness box and was cross examined. Her father was also cross examined. Husband entered witness box and his deposition is at Exh.30.

7. The Additional Sessions Judge, was greatly influenced by the fact that the applicant resided with husband - respondent, for a short time and, thereafter, left the house. She has been unable to point out any ill-treatment or any

demand for money which forced her to leave the house in such a short time and that is how, learned Additional Sessions Judge holds that despite two notices, applicant - wife did not resume cohabitation. The order of the learned Additional Sessions Judge demonstrates that he has undertaken an exercise which is clearly impermissible for Revisional Court. He has re-appraised and re-appreciated the evidence on record. Wife has deposed about cruel treatment to her. Her evidence is corroborated in details by her father. The nature of the proceedings should not have lost sight of by the Additional Sessions Judge. In maintenance proceedings, the burden of proving the ill-treatment and cruelty to the hilt is not expected in all cases. Whenever, there is a clear statement by the wife and there is some material, it is not as if the maintenance has to be denied because complete corroboration is lacking. The very purpose of the proceedings would be defeated if in all

cases, the applicant wife is expected to lead such evidence. That apart, in the facts and circumstances of the present case, the trial court was in no error in relying upon the testimony of the wife and her father. Mere suggestion would not demolish her case completely. The so called omissions are not such as would destroy her testimony completely. In such circumstances, the observations of the learned Additional Sessions Judge in para 8 of the order are untenable and vitiated by an obvious error apparent on the face of record.

8. In my view, merely because two notices have been sent by the husband calling upon the wife to resume cohabitation, does not mean that he has proved the case that he has not failed and neglected or refused to maintain her. The husband was obliged in law to prove that the wife should not be awarded maintenance because he offered to maintain her on condition of her

living with him and she refused to live with him. But that is a case falling under second proviso to section 125(3). Section 125(4) states that the wife is not entitled to receive an allowance for the maintenance or interim maintenance, or the expenses of the proceedings, as the case may be, from her husband, if, without any sufficient reason, she refused to live with her husband. That was obviously for the husband to demonstrate which he has failed to prove in the facts of the present case.

9. In the result, Revision Application succeeds. Order of Additional Sessions Judge is quashed and set aside. However, since this Court has awarded maintenance of Rs.250/- p.m. while admitting this Revision Application on 21st November 1998, interest of justice would be sub-served if the order of trial court awarding maintenance at this rate is confirmed with liberty, however, to the applicant wife to apply

for enhancement of the same in accordance with law. All such remedies for the applicant wife are kept open. It would be for her to demonstrate that she is entitled to maintenance at an enhanced rate and such application, if made, would be considered on its own merits and in accordance with law by the trial court, of course, after giving an opportunity to the respondent - husband. Rule is made absolute accordingly.

(S.C.Dharmadhikari, J)